IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION
GENERAL LIST

Revised
Not Restricted
Suitable for Publication

Case No. CR-19-00134
Indictment No. J12129235

DIRECTOR OF PUBLIC PROSECUTIONS

v

MICHAEL PANAYIDES

JUDGE:	HIS HONOUR JUDGE McINERNEY
WHERE HELD:	Melbourne
DATE OF HEARING:	6 November 2019
DATE OF SENTENCE:	15 November 2019
CASE MAY BE CITED AS:	Director of Public Prosecutions v Panayides
MEDIUM NEUTRAL CITATION:	[2019] VCC 1849

REASONS FOR SENTENCE

Subject: CRIMINAL LAW

Catchwords: Sentence – theft of a motor vehicle – culpable driving causing death – recklessly causing injury – failing to assist after accident involving death – negligently dealing with proceeds of crime – unlicensed driving (summary charge) – plea of guilty

Legislation Cited: *Crimes Act* 1958, s74, s318(1), s318(1A), s18, s194(4); *Road Safety Act* 1986 (Vic), s61(1), s61(3), s18; *Criminal Procedure Act* 2009, s145; *Road Safety Road Rules* 2009, r153; *Sentencing Act* 1991, s5(a), s5(b), s5(2)(daa), s11A, s18

Cases Cited: *Director of Public Prosecutions v Lim* [2018] VCC 2166; *Director of Public Prosecutions v Victorsen* [2018] VCC 2202; *R v Franklin* [2009] VSCA 77; *The Queen v Harding* [2008] VSCA 124; *Bankal v The Queen* [2019] VSCA 171; *R v DJK* [2003] VSCA 109; *Director of Public Prosecutions v Dalgliesh (a pseudonym)* [2017] ALJR 91; *R v Guariglia* [2001] VSCA 27; *Ibbs v R* (1987) 163 CLR 447; *Hall v The Queen* [2010] VSCA 349; *Director of Public Prosecutions v Panayides* [2010] VCC 1048; *Pasznyk v The Queen* [2014] VSCA 87; *R v Scholes* [1998] VSCA 17

Sentence: Convicted and sentenced to a total effective sentence of eleven years' imprisonment with a non-parole period of eight-and-a-half years.

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr M Rochford QC with Ms H Bate (for plea and sentence)	Solicitor for the Office of Public Prosecutions
For the Accused	Mr R Lawrence (for plea) Ms H Anderson (solicitor, for sentence)	David Barrese & Associates Pty Ltd

HIS HONOUR:

1 Mr Panayides was born on the 18th day of August 1991 and pleaded guilty on the 6th day of November 2019 to five counts on Indictment number J12129235. Mr Panayides was twenty-five at the time, and is now twenty-six.

2 At such plea, Mr Rochford, of Her Majesty's Counsel, with Ms Bate, appeared on behalf of the Director of Public Prosecutions, and Mr Lawrence appeared for Mr Panayides.

3 Mr Panayides also asked me to take into account, pursuant to s145 of the *Criminal Procedure Act* 2009, the summary offence of unlicensed driving.

4 Charge 2 is that on the 12th day of August 2018 in Chapel Street, South Yarra, Mr Panayides caused the death of Gitta Scheenhouwer by culpable driving, on the basis of negligent driving, a breach of s318(1) of the *Crimes Act* 1958. That is, in driving your vehicle, you failed unjustifiably, and to a gross degree, to observe the standard of care which a reasonable person should have observed in the circumstances.

5 The seriousness of such crime is recognised by the Victorian Parliament, which has prescribed a maximum penalty of twenty years' imprisonment. The standard sentence for culpable driving, now prescribed by s318(1A) of the *Crimes Act*, is eight years. I must take that standard sentence into account as one of the relevant factors in sentencing you. Section 5(a), s5(b) and s11A of the *Sentencing Act* also apply to your sentence. The Parliament has thereby taken into account the terrible consequences of such crimes.

6 To assist the Court, I was provided with two sentences imposed by this Court since the standard sentencing scheme began, being *Director of Public Prosecutions v Lim* [2018] VCC 2166 and *Director of Public Prosecutions v Victorsen* [2018] VCC 2202, and have found each of those of assistance.

7 Mr Panayides also pleaded guilty to:

- Charge 1, theft of the car involved in the collision, a breach of s74(1) of the *Crimes Act* 1958, with a prescribed maximum penalty of ten years' imprisonment.

- Charge 3, in the same course of driving, recklessly causing injury to Borker Andreevski, a breach of s18 of the *Crimes Act* 1958, which brings with it a prescribed maximum penalty of five years' imprisonment.

- Charge 4, failing to assist Gitta Scheenhouwer after the accident when he ought reasonably to have known that such accident had resulted in a person being injured or killed, such being a breach of s61(1) and (3) of the *Road Traffic Act* 1986, for which the maximum penalty prescribed by Parliament is one of ten years' imprisonment.

- Charge 5, negligently dealing with the proceeds of crime, a breach of s194(4) of the *Crimes Act* 1958, for which the maximum penalty prescribed is one of five years' imprisonment.

- As to the statutory matter, the penalty prescribed for driving without a licence is a period of six months' imprisonment and/or 60 penalty units.

8 The then Chief Justice, Marilyn Warren, in *R v Franklin* [2009] VSCA 77 at [12], said:

> "Cases of culpable driving continue to come too frequently before the courts. What is so striking about these cases is that one moment in time can have such devastating consequences. … ."

9 This case is no different. Last Wednesday week, the 6th November 2019, the Court heard directly from five witnesses, and the Victim Impact Statements of two other witnesses were read to the Court. They spoke lovingly of Gitta Scheenhouwer, providing to the Court emotional memories of an energetic, positive, adventurous woman with a lust for life. Her partner, Thomas Kleinegris, by his words, particularly illustrated those qualities.

10 Of course, as I explained, after listening to such Victim Impact Statements,

these proceedings cannot bring Gitta back, nor can the Court ever pass a sentence which can in any way be balanced against such loss of life and regret. Although the victim in Charge 3 did not suffer to such degree, in her daughter Violeta's Victim Impact Statement, she spoke of the impact of that crime upon her mother, herself and family. I have re-read such Victim Impact Statements a number of times and they are moving.

11 What was most impressive about the Victim Impact Statements, both oral and read, was their positivity. At no time was there a call for retaliation or revenge. They were appropriate, intelligent statements recounting the effect of these crimes.

12 Mr Panayhides, each of the victims has suffered a profound sense of needless loss at your hands. Pursuant to s5(2)(daa) of the *Sentencing Act*, I must have regard to the impact that your offending has had on Ms Scheenhouwer's family and also the Andreevski family.

13 Returning to *Franklin* (*ibid*), in the same paragraph, the Chief Justice went on to say:

> "… culpable driving is punishable by 20 years' imprisonment. Such a severe maximum penalty reflects the gravity of the offence and the culpability of the perpetrator."

14 The Parliament, in order to try to deter their occurrence, increased the penalty for culpable driving to twenty years' imprisonment in September 1997. Despite such, and the pronouncements by the Chief Justice in 2009, such crimes have not stopped. This Court unfortunately continues to deal with such crimes. As an example, last week when this plea was conducted, another plea was conducted that very day where a cyclist had been killed, and two trials were happening within the Court concerning the death of persons as a result of motor accidents.

15 Chief Justice Warren also said in *Franklin* at [22], as to culpable driving:

> "… sentences reflect the gravity of the offences, Parliament's intention and the community's expectation [is] that such offences be dealt with sternly. … ."

and at [32], however, warned Judges that:

> "… adherence to general deterrence ought not result in a sentence that would be crushing … ."

History of Charge 4 – Fail to assist after accident

16 As to Charge 4, albeit the state of mind agreed at plea, the maximum penalty prescribed for such offence is ten years' imprisonment.

17 Such penalty was increased by the Parliament in June 2005, from the then existing two years to ten years.

18 The Court of Appeal noted in *Wassef v The Queen* [2011] VSCA 30, at [26,] the Second Reading Speech to such amendment when the relevant Minister said:

> "The Victorian community has been rightfully concerned about recent cases where drivers have left the scene of an accident in which a person has been killed or seriously injured without rendering assistance. Failing to stop in these circumstances is a despicable and cowardly act. The Bracks government has listened to community concerns about this very serious issue, and as a result the penalties for drivers involved in an accident in which a person is killed or seriously injured who fail to stop and render assistance will be substantially increased. …
>
> The maximum penalty of 10 years jail …
>
> … will help to ensure that a person who suspects that he or she may be charged with one or other offences (for example because he or she is affected by alcohol or illegal drugs when the accident occurs) will no longer have an incentive to escape from the scene."[1]

19 The same Court of Appeal, in regard to drivers who act in such an unhuman way, said as follows:

> "Drivers who, in breach of their duty, depart the scene of an accident in circumstances where it is likely to be inferred that they did so to avoid the consequences of unlawful conduct, cannot expect that the courts will give weight to exculpatory explanations for why they have done so which are proffered after the event. They must expect the imposition of substantial terms of imprisonment."

20 By his plea, Mr Panayides admits to the mental element as defined in s61(3)(b);

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1 Victoria, *Parliamentary Debates*, Legislative Assembly, 5 May 2005, 942-3

that is, that he ought reasonably have known:

(a) that the accident occurred;

(b) that such accident had resulted in a person being killed or suffering serious injury.

21 Given such requirement, the only victim who would qualify in regard to his plea is Gitta Scheenhouwer.

22 I was concerned as to the circumstances as I see them, as against the plea made by Mr Panayides.

23 The Court forwarded an invitation for further submissions on the 13th November 2019 which has been exhibited today. The Court received, on the afternoon of the 13th November 2019, further written submissions from the Director of Public Prosecutions and yesterday from counsel for Mr Panayides. Each of those written submissions has been tendered today.

24 Upon consideration of those written submissions, the Court accepts the submission of Mr Lawrence that irrespective of the Court's view that Mr Panayides must have seen the cyclist, given the plea, the Court must accept that Mr Panayides has pleaded and accepted liability in regard to this charge, by way of constructive knowledge.

25 In such circumstances, the statement in the Record of Interview of Mr Panayides that he did not see Ms Scheenhouwer before or after the accident, cannot be discounted.

26 I also accept therefore that there is a difference in moral culpability between a person who leaves the scene of an accident knowing a person has been injured or killed, and a person who leaves the scene of the accident without that knowledge, the latter state obviously being of less culpability. I make the point that the same penalty applies under the section; however, logically, this Court

must take into account such reduced culpability, and I do.

27 As to culpability, Lasry AJA in *The Queen v Harding* [2008] VSCA 124, at [24], said:

> "… The object of the section is to force drivers to stop when particular events occur. If the particular event, as in this case, is a serious injury …, then the extent of the injuries is relevant to assessing the seriousness of the offence and the extent to which a failure to stop represents a failure to properly discharge the obligations of drivers in such a situation. … ."

28 In *Wassef* (*supra*) at [30], Redlich JA said:

> "As a consequence of the increase in the maximum penalty for failing to stop, it is now to be viewed as a much more serious offence than was hitherto the case. Not only has the maximum increased fivefold but it is twice as much as the maximum penalty for the offences of reckless conduct endangering a person and dangerous driving causing serious injury. Accordingly, guided by the new maximum sentence, the sentencing judge was entitled to view the relative seriousness of the two offences as he did."

29 Finally, in *Bankal v The Queen* [2019] VSCA 171, at [38], the Court, comprised of the current President Maxwell and Priest JA, said:

> "The maximum period of imprisonment prescribed for the offences of failing to stop and to render assistance was increased from two years to 10 years (and the minimum period of driver licence disqualification for a first offence was increased from two years to four years) on 1 June 2005. In more recent times — all other things being equal — it has not been unusual for sentences of three to four years' imprisonment to be imposed for the offence of failing to render assistance after a motor vehicle accident in which a person was seriously injured or killed, sentences of a similar order routinely being imposed for the allied offence of failing to stop after an accident (although, it must be acknowledged, it is also not unusual for lesser sentences to be imposed)."

Social rehabilitation

30 In pronouncing this sentence, I am reminded of the role of the Court in such circumstances as detailed by Vincent J, as he then was, in *R v DJK* [2003] VSCA 109, at [18], where he said:

> "This notion of social rehabilitation is one that I do not believe has been accorded anything approaching significant recognition as an identifiable underlying concern of the criminal justice system. It seems to me that the process of social and personal recovery which we attempt to achieve in order to ameliorate the consequences of a crime can be impeded or facilitated by the response of the courts. The imposition of a sentence often constitutes both a practical and ritual completion of a protracted painful period. It signifies the recognition by society of the nature and

> significance of the wrong that has been done to affected members, the assertion of its values and the public attribution of responsibility for that wrongdoing to the perpetrator. … ."

Driving of Mr Panayides

31 In analysing cases to which I was referred to in this plea, I have seen the words horrendous, outrageous and appalling used. In the end, this Court is required to sentence Mr Panayides for his particular offending, and as has been remarked in the cases, comparisons are rarely instructive, as it is a crime shaped by conduct, not easily to be compared.

32 As the High Court said in *Director of Public Prosecutions v Dalgliesh (a pseudonym)* [2017] ALJR 91 at 1073-1075, [49], Mr Panayides is entitled to the imposition of a just sentence based upon the particular facts of this case.

33 Before proceeding further I should make two general comments. I stress such have not been taken into account in any way in assessing Mr Panayides' sentence:

(a) As disturbing as Mr Panayides' driving was in the Bourke Street Mall, the bottom half of Swanston Street, and after he turned into Chapel Street, I am not here to sentence Mr Panayides for such behaviour. Such behaviour was put before me to place his driving at the time of these crimes in context, and in anticipation of objections to the receipt of such evidence, which objection was not maintained.

Given the recent history of road trauma in this city, to which we shall be unfortunately reminded by a coronial inquiry next week, such driving by Mr Panayides, given his concerning social history, is such that I ask the Director to forward this sentence to the Attorney-General to ensure that Mr Panayides is, if possible, offered appropriate treatment while in jail and not only when he is about to be given parole.

Further, the Attorney-General might want to give consideration to the *Serious Offender Act* 2018 as to post-sentence control orders, as

Schedule 2 of such Act specifically excludes culpable driving from the definition of a serious violent offence;

(b) Mr Panayides left the scene of his criminality and was not apprehended until 5.00pm the next day – that is, the 13th August 2018. He was identified by a member of the public, after pictures were published of him in the newspapers and television. After having been apprehended in the city, he was then taken to hospital with injuries, being abrasions and a broken arm. In the ambulance, and/or at hospital, he was treated with pain-relieving medication.

At 22:15 that night (30 hours after the collision), his blood was analysed, disclosing no common illegal drugs. A toxicology analysis of his blood found a number of substances, but due to the time involved, the prosecution could not contend before this Court that at the time of his crimes he was in any way drug affected, so as to impact upon his driving. In that regard, the Prosecutor did not rely upon the opinion proffered in the depositions (at page 302) by Dr Gaya, because of the time differences and consumption uncertainties.

Indeed, it was specifically submitted by Mr Panayides' counsel, Mr Lawrence, that there was no evidence before the Court of Mr Panayides being drug affected at the time of driving. Mr Lawrence further submitted that in considering the objective circumstances relevant to the culpable driving as presented by the prosecution, there were no personal factors or circumstances relevant which should be taken into account in the assessment of the objective gravity of the offending. Such was also the submission of the prosecution [47]. It should also be noted that in the Record of Interview, in answer to Question 51, Mr Panayides had denied that he was affected in any way by drugs at the time of driving.

Objective offending

34 As to Mr Panayides' driving, the factors relevant are really summed up by

describing such driving as a serious case of negligent culpable driving, emanating from the blatant disregard for life and safety of others on the road.

35 The learned Prosecutor identified factors in this analysis relied upon by the Director [48]:

(a) Mr Panayides was speeding in a built up signed area.

If I may say so with respect, such a bland statement underscores this factor.

Mr Panayides was travelling at approximately 80 kilometres per hour in a 40-kilometre zone at the time of the collision, 9.58 in the morning.

I have watched the CCTV video, exhibit D, numerous times. To do so is illuminating of the importance of this factor.

This factor needs to be assessed having regard to:

(i) the time – the accident happened on a Sunday morning at 9.58am in Chapel Street, South Yarra, while Mr Panayides' car was travelling south, having just passed Ellis Street. It was a fine, sunny day, albeit cold in South Yarra. (See Police Summary, page 14);

(ii) the area of Chapel Street was active with parked cars, moving cars, cyclists and pedestrians;

(iii) parked cars were on each side of Chapel Street – the CCTV video shows that one had just parked on the eastern side of Chapel Street at 9.57am, generally in the path of Mr Panayides' vehicle;

(iv) at 9:57:42, a person crosses the street from east to west in the path of Mr Panayides' vehicle;

(v) persons were walking in the area, and notably on the west side of Chapel Street, a woman was wheeling her infant in a pram in the

same direction as Mr Panayides was travelling at 9:58:25;

(vi) Ms Scheenhouwer was travelling in a designated bike lane, cars must not drive in such lanes. Ms Scheenhouwer was therefore entitled to assume that she could ride safely without interference, and was to be accorded right of way;

(vii) It is in this context that one views the CCTV video (exhibit D). One can only describe the speed as really frightening. I, of course, am no reconstructionist, but however one describes it, Mr Panayides' travelling at the time of the accident at twice the allowed speed certainly makes the car stand out on the CCTV video, and the resultant consequences of such speed are cruelly dramatic;

(viii) Perhaps as a further demonstration of his speed, there is no braking in the last 5 seconds before the accident according to the reconstructionists and experts, and the collision is of high impact:

- the car driven by Mr Panayides propels the Lancer across the road into another car parked and facing north, and consequently, Mr Panayides' car rolls and is rotated 90 detrees to the left (see photograph page 9, exhibit 2);
- Mr Panayides' car continues on after colliding with the Lancer, and collides with two further parked cars;
- Mr Panayides' car crushes the victim against a parked Mercedes;
- Mr Panayides' car finally comes to a stop as the result of the totality of such impacts;

(ix) As a consequence of the combination of the failure to keep a proper lookout and speed, Mr Panayides was unable to take safe evasive

action;

(b) The second factor relied upon by the Prosecutor in this regard was that Mr Panayides was driving dangerously by attempting to go on the inside of the Lancer travelling in front of him.

Such driving is graphically illustrated in the CCTV video, exhibit D, and particularly so by the photographs identified in exhibit 2, the report of the forensic engineer, Dr Rechnitzer, dated 16th October 2019, in particular, at pages 37 to 39.

I differ from the engineer, who suggested Ms Scheenhouwer had low conspicuity. Mr Panayides should have had a clear view of her from at least 38 metres from the accident, at a time when he in fact increased his speed from 69 kilometres per hour (see the analysis of the 5 seconds leading up to the accident in the statement of Mr Appleton, the Mercedes product investigator, dated 28 August 2019). In this regard, it is necessary also to look at the photographs, being figure 25 on page 39 of the engineer's report, which I find show how Ms Scheenhouwer should have been obvious to him as he approached her. Clearly, had he been keeping a proper lookout, he would have seen her. Such is confirmed by Photographs 17 and 18 on page 32, and by Photograph 20 on page 34.

When the CCTV video, exhibit D, was played during the plea, I made the comment that Mr Panayides, in his driving, was never going to be able to pass on the inside of the Lancer. Having relooked at the photographs and plans, it is clear that it was quite possible for a car to drive on the inside of the Lancer. Of course, that is without taking into account the fact that Ms Scheenhouwer was in the bike lane. Had Mr Panayides been keeping a proper lookout, such would have been demonstrated to him. The photograph taken at page 9 of the report at 9:58:40 is of particular importance in this regard, because it may well demonstrate that as he was

driving, he finally realised the presence of Ms Scheenhouwer. He then came into contact with the Lancer by riding up the side of the Lancer and ultimately rolling over, and thereafter, "sandwiching" Ms Scheenhouwer between the two Mercedes and killing her. This of course is postulation, and I refer again to my comments as to the negotiated plea in paragraphs 24 to 26.

36 The last point made as to the objective offending by the Prosecutor was, of course, a fact not contested, as set out in sub-paragraph (d) of his submissions, that Ms Scheenhouwer made no contribution to the cause of the collision in any way.

37 As to objective gravity as remarked by then President Winneke in *R v Guariglia* [2001] VSCA 27, at [14], the driving of Mr Panayides was the substantial and operative cause of the accident and further, as the then President said:

> "… In one sense the absence of an explanatory factor such as alcohol serves to make the course of conduct worse because it can only serve to confirm the view that the conduct was the product of a wilful disregard for the road laws and the safety of those using the highway. … ."

38 In the totality of the circumstances here, upon the *Ibbs v R* (1987) 163 CLR 447, at 452, scale of heinousness, I assess the culpability as being between the mid to high range. The learned Prosecutor put to the Court that such offending was not low level (paragraph 49), with which Mr Lawrence did not cavil (exhibit 1, paragraph 18).

39 As to the issue of gravity, I should remark that Mr Panayides refers, in his Record of Interview, to a lever as somehow activating the cruise control and perhaps as having some role in the accident. Such suggestion made in the Record of Interview as a possible causative factor has been demonstrated to be without foundation. The Mercedes itself was found to be in excellent mechanical condition, as one would expect of a 2017 Mercedes GLC 250.

40 As to Charge 3, I assess the objective culpability of this charge as being

between the mid to high range. As I have said, the impact of the collision with Ms Andreevski's Lancer was violent and her car was pushed across Chapel Street into another car. I need to point out that this charge is one of cause injury only, this must be borne in mind when assessing the Victim Impact Statement of Ms Andreevski. Her mother's injuries appear to have been severe bruising and distress for which she was taken to The Alfred for one week and thereafter, was in rehabilitation for three weeks. I fully appreciate the views of the family as to the cause of her eventual death later that year; however, I make the point that such consequence is not put as part of the prosecution case, nor as a matter for which Mr Panayides must take responsibility.

41 As to Charge 4, Mr Panayides left the scene of the accident. He was prevailed upon to remain but did not. He fled the scene and proffered no assistance at all, nor made any enquiries as to any injuries or the state of any persons at the scene of the accident, which he had caused. I repeat my earlier comments as to the fact that this Court accepts and pronounces sentence in regard to this charge on the basis of the mental element set out in the amended charge. Given the plea, the mental element, the fact of the death of Ms Scheenhouwer and the authorities that I have earlier referred to in paragraphs 18 to 29, I find the objective culpability of Charge 4 is between the mid to high range.

42 As to Charges 1 and 5, the only point I make is that Mr Panayides has numerous priors for dishonesty.

Mr Panayides' personal circumstances

43 Having assessed the gravity of the crimes, one then comes to assess the personal circumstances of Mr Panayides in the manner as decreed by Redlich JA in *Hall v The Queen* [2010] VSCA 349, at [24].

44 In this regard, Mr Lawrence tendered chronology and plea submissions, exhibit 1.

45 One of the first matters raised by Mr Lawrence concerned Mr Panayides'

criminal history. Mr Lawrence stressed that he had no priors for driving. While that is so, Mr Panayides has a lengthy criminal history. In particular, when aged only eighteen, being sentenced to five years' imprisonment with a non-parole period of 36 months in this Court on 5 August 2010 in regard to four armed robberies perpetrated by him and others.

46 Given your young age at that time, Mr Panayides, I felt that I should read the sentencing remarks of Judge Patrick (*Director of Public Prosecutions v Panayides* [2010] VCC 1048). Such remarks are concerning to say the least. The sentence was passed upon you, albeit your youth and the Judge seeking to pass a sentence which was not crushing. The sentence was clearly warranted considering the criminality involved.

47 Your personal history given to that Court reflected almost exactly what is set out at paragraphs 1 to 7 of Mr Lawrence's written submissions; however, in that Court, a psychologist was called on your behalf.

48 Your disrupted early family life and early criminality were noted, together with your placement at a young age in Juvenile Justice Centres, and the fact that you began to take illegal drugs from the age of twelve. Heroin has unfortunately been an ongoing affliction of yours.

49 Concerningly, her Honour said, at [40] to [41], in regard to the report of the psychologist, Dr Wauchope, the following:

> "Dr Wauchope says that your cycle of psychological and emotional problems, substance abuse offending, incarceration and release seem to be quite entrenched. She says that you had not taken responsibility for your behaviour and regarded your periods of detention as a 'walk in the park'. She indicates that you have no real understanding or empathy for your victims and no real coping strategies or insight into your own behaviour. …
>
> … She believes that if you can manage your substance addiction then you would be able to manage your offending but without help you would have no real chance of managing that on your own. … ."

50 At [60], her Honour stated:

> "… your prospects for rehabilitation are absolutely linked to the need for you to stay away from illegal drugs. At present my view is that your prospects for rehabilitation are poor but not hopeless."

51 Those views expressed by her Honour in 2010 have proved correct, given the regularity of your offending since, and the obvious role which your addiction has played.

52 Your last sentence was on the 30th March 2017 in the Melbourne Magistrates' Court when you were sentenced to twelve months' imprisonment for a series of serious offences, being assault, possession of a dangerous weapon and burglary. Allowing for pre-sentence detention, you would have been eligible for release in approximately mid November 2017. That you then committed these offences nine months later highlights the concern expressed not only by her Honour in 2010, but felt by me today.

53 I want to stress, you do not come before this Court to be again sentenced for your prior crimes. While your counsel is right to refer to the fact that your history does not contain driving offences, you are clearly not a person with an unblemished character, nor could the crimes where you have injured and put people's lives at risk be described as aberrations.

54 To adopt what the Court said in *Pasznyk v The Queen* [2014] VSCA 87, at [67], given to me by your counsel**,** your prior offending demonstrates your prospects of rehabilitation to be poor and your propensity to commit crimes which place people at risk of injury, if not death, is such that your sentence must be one which protects the community and effects specific deterrence. Given you are only twenty-eight years of age, Mr Lawrence expressed concern as to you becoming institutionalised. While rehabilitation is always an important factor to be taken into account when dealing with a young man, I find your chances of effecting same to be limited.

55 I was also referred by your counsel to *R v Scholes* [1998] VSCA 17, and while the general proposition referred to at [20] therein is correct, it would, in my view,

given your history, be naïve to give too much weight to the fact that you have actually not committed a driving offence before.

56 I accept totally your personal background, which no doubt, together with your addiction, sits as the explanation of your prior criminality. I noted in Court your mother and godmother, who still support you.

57 As to mitigating factors, Mr Lawrence put your acceptance of fault in the Record of Interview, and your co-operation. I have re-read the Record of Interview and accept that you were co-operative, in the sense that you answered questions. You postulated a mechanical cause for the accident, but maintained no knowledge of the cause of collision, although it is correct to say that you accepted responsibility at Question 238, for, as you remarked, you were driving the car. You remarked that you did not even see the bike (in answer to Question 301), that it did not look to you like anyone was hurt (Question 318) and that you ran off because you panicked, but you said you did not know you had hit someone.

58 Mr Lawrence further said that you are entitled to a discount for your plea. That is correct. Such is utilitarian and has assisted justice for all, especially the family in this regard, saving them from the rigours of a criminal trial. Mr Lawrence further submitted that your plea indicates some acceptance of responsibility and some remorse, which I accept, although I make the point that there was not one skerrick of a mention of remorse in the Record of Interview.

59 Mr Lawrence conceded jail as the appropriate sentence but reminded the Court that in regard to Charge 4, the plea involved the lesser mental state, and submitted there should be some form of cumulation, given the same driving was the causative factor.

60 Both counsel submitted the Court must be mindful in the circumstances of the requirement of totality.

61 The objective seriousness of your culpable driving leads the Court to conclude that a sentence higher than a standard sentence should be imposed for that crime. As I have said, in imposing such sentence, I take into account all relevant factors.

Sentence

62 On the Charge of theft, you are convicted and sentenced to a term of imprisonment of one (1) year.

63 On the Charge of culpable driving causing death, you are convicted and sentenced to a term of imprisonment of nine (9) years.

64 On the charge of recklessly causing injury, you are convicted and sentenced to a term of imprisonment of two (2) years.

65 On the charge of failing to assist after an accident involving death, you are convicted and sentenced to a period of imprisonment of three (3) years.

66 On the charge of negligently dealing with the proceeds of crime, you are convicted and sentenced to a period of imprisonment of one (1) year.

67 On the summary charge of unlicensed driving, you are convicted and sentenced to a period of imprisonment of one (1) month.

68 I order that Charge 2 be the base sentence and that three (3) months of the sentence on Charge 1, six (6) months of the sentence on Charge 3, one (1) year of the sentence on Charge 4 and three (3) months of the sentence on Charge 5 be served cumulatively with each other and upon the base sentence, thereby making a total effective sentence of eleven (11) years.

69 I order, pursuant to s18 of the *Sentencing Act* 1991, that the minimum term that you must serve prior to being eligible for parole is a period of eight-and-a-half (8½) years.

70 The pre-sentence detention in this matter is 459 days. In accordance with s18

of the *Sentencing Act* 1991, I declare that such period is deemed to be service of this sentence and that a record of such declaration be recorded in the records of the this Court.

71 Pursuant to s89 of the *Sentencing Act* 1991, any licence you may hold is cancelled. In my view, the public needs to be protected from you as so far as is possible. You are disqualified from obtaining a licence to drive a motor vehicle for twenty years.

72 The Parliament requires me to advise you of the benefit that you received in this sentence from the fact that you have pleaded guilty. Complying with Parliament's request is somewhat difficult when sentencing is a multifactorial procedure; however, doing as best as I can, I indicate to you that had you not pleaded guilty, the sentence that I would have imposed upon you by way of a total effective sentence would have been fourteen years' imprisonment with a minimum of eleven-and-a-half years.

73 I have signed the Forfeiture Order as sought.

74 Are there any questions?

75 Take the prisoner away.

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